

Filed by: Trial Section Merits Panel  
Mail Stop Interference  
P.O. Box 1450  
Alexandria VA 22313-1450  
Tel: 571-272-9797  
Fax: 571-273-0042

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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ESPER **BOEL**, TOVE CHRISTENSEN  
and HELLE F. WOLDIKE  
Junior Party  
(Application No. 08/435,557),

v.

RANDY M. **BERKA**, DANIEL CULLEN,  
GREGORY L. GRAY, KIRK J. HAYENGA  
and VIRGIL B. LAWLIS  
Senior Party  
(Patent Nos. 5,364,770 and 5,578,463).

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Patent Interference No. 105,205

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**JUDGMENT - RULE 127**

Before: W. SMITH, LANE and POTEATE, Administrative Patent Judges.<sup>1</sup>

POTEATE, Administrative Patent Judge.

In an interference, “priority of invention is awarded to the first party to reduce the invention to practice unless the other party can show it was the first to conceive of the invention and that it exercised reasonable diligence in later reducing the invention to practice.” *Hitzeman v. Rutter*, 243 F.3d 1345, 1353, 58 USPQ2d 1161, 1166 (Fed. Cir. 2001). Boel’s earliest accorded priority benefit date is March 17, 1986, the filing date of its Danish Patent Application

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<sup>1</sup>As part of Board efforts under the Government Paperwork Elimination Act, signatures on papers originating from the Board are being phased out in favor of a completely electronic record. Consequently, subsequent papers in this case originating at the Board will not have signatures. The signature requirements for the parties have not changed. *See, e.g.*, 37 C.F.R. § 10.18.

DK 1226/86. In its Preliminary Statement, Boel states that it will rely upon its accorded benefit date of March 17, 1986 during the priority stage as to both Counts 1 & 2. Paper 45, ¶ 4. Berka's accorded priority benefit date as to Counts 1 and 2 of the interference is August 29, 1985, the filing date of U.S. Patent Application 06/771,374. Based on the evidence of record, Boel cannot prevail on the question of priority of invention as against Berka.

Accordingly, it is:

**ORDERED** that judgment on priority as to Counts 1 and 2 (Paper 54 at 5) is awarded against junior party **ESPER BOEL**, TOVE CHRISTENSEN and HELLE F. WOLDIKE.

**FURTHER ORDERED** that junior party ESPER **BOEL**, TOVE CHRISTENSEN and HELLE F. WOLDIKE is not entitled to a patent containing claims 34-55 of application 08/435,557.

**FURTHER ORDERED** that a copy of this paper shall be made of record in the files of U.S. Application 08/435,557 and U.S. Patent Nos. 5,364,770 and 5,578,463.

**FURTHER ORDERED** that if there is a settlement agreement, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 41.205.

/ss/ William F. Smith  
WILLIAM F. SMITH  
Administrative Patent Judge

/ss/ Sally Gardner Lane  
SALLY GARDNER LANE  
Administrative Patent Judge

/ss/ Linda R. Poteate  
LINDA R. POTEATE  
Administrative Patent Judge

BOARD OF  
PATENT APPEALS  
AND  
INTERFERENCES

cc (Federal Express):

Counsel for BERKA:

Samuel B. Abrams, Esq.  
JONES DAY  
222 East 41<sup>st</sup> Street  
New York, New York 10017-6702

Tel: 212-326-3875

Counsel for BOEL:

Joseph R. Robinson, Esq.  
DARBY & DARBY P.C.  
805 Third Avenue  
New York, New York 10022-7513

Tel: 212-753-6237